



This Agreement is NOT a License

**NONDISCLOSURE AND SOFTWARE USAGE AGREEMENT
FOR RELEASE OF EAR SOFTWARE**

(Government Purposes Only - Project Release Under a Contract/Grant/Agreement)

WHEREAS, [] located at [] (hereinafter "RECIPIENT") has requested that the United States Government, as represented by the National Aeronautics and Space Administration, **Marshall Space Flight Center** located at **MSFC, AL 35812** (hereinafter "NASA"), release certain COMPUTER SOFTWARE; and

WHEREAS, NASA Policy Directive (NPD) 7120.4 and NASA Procedural Requirement (NPR) 2210.1 authorize NASA to release SOFTWARE;

NOW THEREFORE, NASA and RECIPIENT (together "PARTIES") agree as follows:

I. **DEFINITIONS.** For purposes of this Agreement,

A. "CONTRACT/GRANT/AGREEMENT" is defined as:

Agreement Name and No.: _____
Contracting Agency: _____
Termination Date*: _____

B. "NASA SOFTWARE" is defined as the COMPUTER SOFTWARE, except EXCLUDED INFORMATION, described as follows:

Name: **Telescience Resource Kit (TReK) Software**
Version: **Release 4.0**
NASA Case No.: **MFS-32745-1**

C. "TECHNICAL DATA" is defined as any DATA, except EXCLUDED INFORMATION, necessary for the development, production, or use of the NASA SOFTWARE, and includes the following:

D. "NASA POINTS OF CONTACT (POC)" is identified as the following:

	<u>NASA Technical POC*</u>	<u>NASA Software Release Authority</u>
Name:	<u>Michelle Schneider</u>	<u>Danny Garcia</u>
Address:	<u>NASA MSFC EO50</u>	<u>NASA MSFC ZP30</u>
City/State/Zip:	<u>Huntsville AL 35812</u>	<u>Huntsville AL 35812</u>
Phone:	<u>256-544-1535</u>	<u>256-544-4138</u>
E-mail:	<u>michelle.schneider@nasa.gov</u>	<u>danny.garcia@nasa.gov</u>

E. "RECIPIENT SOFTWARE CUSTODIAN/USER" is identified as:

Name:	_____	City/State/Zip:	_____
Address:	_____	Phone:	_____
Address:	_____	E-mail:	_____

- F. "COMPUTER SOFTWARE" is defined as a collection of one or more programs or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- G. "DATA" is defined as recorded information, regardless of form, the media on which it may be recorded, or the method of recording.
- H. "EXCLUDED INFORMATION" is defined as information that:
1. Was in the public domain prior to the effective date of this Agreement;
 2. Was known to RECIPIENT prior to the effective date of this Agreement, provided that RECIPIENT shall have the burden of establishing such prior knowledge by competent written proof;
 3. Becomes part of the public domain subsequent to the effective date of this agreement through no act or omission of RECIPIENT;
 4. Is made available to RECIPIENT, under no obligation of confidentiality, by a third party subsequent to the effective date of this agreement; or
 5. Is independently developed by RECIPIENT, provided that RECIPIENT shall have the burden of establishing such independent development with written documentation.

II. **PURPOSE.** This Agreement is for the nondisclosure and use of NASA SOFTWARE and TECHNICAL DATA for the purpose of performing work under the CONTRACT/GRANT/AGREEMENT only.

III. **RIGHTS GRANTED TO RECIPIENT.** In consideration for RECIPIENT'S obligations, as described below, NASA grants RECIPIENT the rights, for domestic use only and subject to any third party intellectual property rights, and limited to U.S. Government purposes to:

- A. Use, reproduce, and prepare derivative works of the NASA SOFTWARE and TECHNICAL DATA only for purposes of fulfilling RECIPIENT's obligations under the CONTRACT/GRANT/AGREEMENT; and
- B. Distribute the NASA SOFTWARE and TECHNICAL DATA to RECIPIENT's employees and subcontractors necessary for RECIPIENT to perform its obligations under the CONTRACT/GRANT/AGREEMENT ("AUTHORIZED USERS"). AUTHORIZED USERS must meet the export control restrictions listed below in Section VI.
1. Distribute the NASA SOFTWARE and TECHNICAL DATA only to RECIPIENT'S, faculty, staff, and students necessary for RECIPIENT to perform its obligations under the CONTRACT/GRANT/AGREEMENT ("AUTHORIZED USERS"). AUTHORIZED USERS must meet the export control restrictions listed below in Section VI.
 2. CONTRACT/GRANT/AGREEMENT ("AUTHORIZED USERS"). Should RECIPIENT's subcontractors need access to the NASA SOFTWARE or TECHNICAL DATA in order for RECIPIENT to perform its obligations under the CONTRACT/GRANT/AGREEMENT, said subcontractors shall execute the attached SOFTWARE USAGE AGREEMENT (Government

Purposes Only - Project Release Under A Contract). Once said subcontractors execute said SOFTWARE USAGE AGREEMENT, said subcontractors will become AUTHORIZED USERS under this Agreement.

IV. **RECIPIENT'S OBLIGATIONS.** In consideration for the rights granted to RECIPIENT above, RECIPIENT agrees as follows:

- A. RECIPIENT shall inform AUTHORIZED USERS of the obligations specified in this Agreement. RECIPIENT shall require that AUTHORIZED USERS be bound by such obligations, and shall obtain the necessary rights to meet RECIPIENT's obligations herein. Furthermore, RECIPIENT represents that it has authority to bind AUTHORIZED USERS to such obligations. RECIPIENT shall require that AUTHORIZED USERS meet the export control restrictions listed below in Section VI.
- B. The NASA SOFTWARE and TECHNICAL DATA are intended for domestic use only and shall not be made available to anyone outside of the United States.
- C. **Neither the NASA SOFTWARE nor TECHNICAL DATA are in the public domain**, and nothing in this Agreement shall be construed as making either available to the public without restriction.
- D. NASA retains all of its rights in the NASA SOFTWARE and TECHNICAL DATA. RECIPIENT acknowledges that it acquires no ownership interest in the NASA SOFTWARE or TECHNICAL DATA under this Agreement.
- E. This Agreement does not, in any manner, constitute the grant of a license to RECIPIENT under any NASA copyright, patent, patent application, or other intellectual property.
- F. NASA is not responsible for maintaining or updating the NASA SOFTWARE or TECHNICAL DATA. NASA is not responsible for correcting errors in the NASA SOFTWARE or TECHNICAL DATA.
- G. The restrictions on use, disclosure, and distribution imposed by this Agreement shall apply to any COMPUTER SOFTWARE or DATA developed by RECIPIENT that incorporates any portion of the NASA SOFTWARE or TECHNICAL DATA.
- H. Use of NASA SOFTWARE and TECHNICAL DATA
 - 1. RECIPIENT shall not distribute the NASA SOFTWARE or TECHNICAL DATA other than to AUTHORIZED USERS.
 - 2. RECIPIENT shall not sell, offer for sale, rent, lease, license, sublicense, assign, or otherwise transfer the NASA SOFTWARE or TECHNICAL DATA.
 - 3. RECIPIENT shall hold the NASA SOFTWARE and TECHNICAL DATA in confidence, and agrees not to disclose the NASA SOFTWARE or TECHNICAL DATA to third parties without prior written permission from the NASA Software Release Authority identified above. EXCLUDED INFORMATION is excluded from the foregoing restrictions.

I. Derivative Works and Bug Fixes

1. If RECIPIENT prepares a derivative work of the NASA SOFTWARE or TECHNICAL DATA, RECIPIENT shall place a notice on or within any such derivative work stating that RECIPIENT has modified the NASA SOFTWARE or TECHNICAL DATA. The notice shall include, at a minimum, RECIPIENT's name, contact information (e.g., address, phone number, or e-mail), and the date and purpose of the modification.
 2. RECIPIENT shall document any changes to the NASA SOFTWARE, including derivative works and bug fixes, in the source files. Any change to the NASA SOFTWARE should adhere to the original coding standards, although upgrading the syntax or style to take advantage of new language features is encouraged where appropriate. All copyright notices, disclaimers, notices, and in-line documentation shall remain part of the NASA SOFTWARE in its modified or derivative form.
 3. Should RECIPIENT or AUTHORIZED USERS prepare a derivative work of the NASA SOFTWARE or TECHNICAL DATA pursuant to the CONTRACT/GRANT/AGREEMENT, the intellectual property rights shall be delineated by the terms set forth in the CONTRACT/GRANT/AGREEMENT, and RECIPIENT shall deliver the complete modified version to NASA by sending a copy to the NASA Software Release Authority identified above.
 4. RECIPIENT agrees to make reasonable efforts to report any bugs discovered in, or bug fixes made to, the NASA SOFTWARE or TECHNICAL DATA to NASA. RECIPIENT shall not assert any rights in said bug fixes, and NASA may use, reproduce, prepare derivative works of, distribute copies to the public, perform publicly, and display publicly such bug fixes without restriction.
- J. Notices. RECIPIENT must retain and reproduce the following in all copies of NASA SOFTWARE, TECHNICAL DATA, and derivative works thereof, or provide said language with all copies of NASA SOFTWARE, TECHNICAL DATA, and derivative works thereof:
1. The disclaimer of warranty, waiver of claims, and indemnification provisions of Sections VII and VIII; and
 2. The following general notice:

This software may be used, reproduced, and provided to others only as permitted under the terms of the agreement under which it was acquired from the U.S. Government. Neither title to nor ownership of the software is hereby transferred. This notice shall remain on all copies of the software.

- V. **THIRD-PARTY RIGHTS.** If the NASA SOFTWARE or TECHNICAL DATA includes a copyright notice, or other restrictive marking, identifying the NASA SOFTWARE or TECHNICAL DATA—or some portion of either—as a third party work, said third party work shall be governed by the terms and conditions of said copyright or restrictive marking. NASA disclaims all warranties and liabilities regarding third party COMPUTER SOFTWARE or DATA, if present in the NASA SOFTWARE or TECHNICAL DATA, and distributes said THIRD PARTY COMPUTER SOFTWARE, DATA, or DOCUMENTATION “as is.”

VI. EXPORT CONTROL.

- A. The NASA SOFTWARE and TECHNICAL DATA have been classified under U.S. export control laws as **EAR ECCN 9A515B**. They are intended for use only by persons who meet the requirements of this classification. The NASA SOFTWARE and TECHNICAL DATA shall be made available only to foreign persons (as defined by 22 CFR §120.16) who would qualify as individuals who can receive exports with the **EAR ECCN 9A515B** classification.
- B. Furthermore, the NASA SOFTWARE and TECHNICAL DATA shall not be provided to any person (as defined by 22 CFR §120.14) on the Consolidated Screening List available at www.export.gov (including but not necessarily limited to: the Bureau of Industry and Security, Denied Persons List, Unverified List and Entity List; Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons, and Changes to List of Specially Designated Nationals and Blocked Persons; Directorate of Defense Trade Controls, List of Statutorily Debarred Parties; Bureau of International Security and Nonproliferation, Federal Register notices for nonproliferation sanctions determinations).
- C. The NASA SOFTWARE and TECHNICAL DATA are “software” and “technical data” within the meaning of the Export Administration Regulations (EAR) at 15 CFR Parts 730-774, and depending upon its application, the International Traffic in Arms Regulations (ITAR) 22 CFR 120-130.
- D. Notwithstanding any provisions contained herein, RECIPIENT is hereby put on notice that export of any goods or DATA containing all or a portion of the NASA SOFTWARE and TECHNICAL DATA made available under this Agreement may require some form of export authorization from the U.S. Government before they are either sent outside of the United States or made available to nationals of a foreign country either within the United States or abroad. For purposes of the export laws, a person who has permanent resident status as defined in 8 U.S.C. §§ 1101(a)(20), and persons admitted to the United States on the basis of refugee status under 8 U.S.C. §§ 1157 and 1158 are U.S. persons and not foreign persons. Failure to obtain necessary export authorizations may result in criminal liability of RECIPIENT under U.S. laws. NASA neither represents that an authorization is not required nor that, if required, it shall be issued. Nothing granted herein to RECIPIENT provides any such authorization license.
- E. RECIPIENT certifies that neither it nor any AUTHORIZED USERS to whom RECIPIENT distributes the NASA SOFTWARE or TECHNICAL DATA is a foreign person (as defined by 22 CFR §120.16) and is not listed on any of the aforementioned “denied Parties/persons” lists.

VII. DISCLAIMERS.

- A. THE NASA SOFTWARE AND/OR TECHNICAL DATA ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY THAT THE NASA SOFTWARE AND/OR TECHNICAL DATA WILL CONFORM TO SPECIFICATIONS, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INFRINGEMENT, ANY WARRANTY THAT THE NASA SOFTWARE AND/OR TECHNICAL DATA WILL BE ERROR FREE, OR ANY WARRANTY THAT TECHNICAL DATA, IF PROVIDED, WILL CONFORM TO THE NASA SOFTWARE. IN NO EVENT SHALL THE UNITED STATES GOVERNMENT, OR ITS CONTRACTORS OR SUBCONTRACTORS, BE LIABLE FOR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF,

RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE NASA SOFTWARE AND/OR TECHNICAL DATA, WHETHER OR NOT BASED UPON WARRANTY, CONTRACT, TORT, OR OTHERWISE; WHETHER OR NOT INJURY WAS SUSTAINED BY PERSONS OR PROPERTY OR OTHERWISE; AND WHETHER OR NOT LOSS WAS SUSTAINED FROM, OR AROSE OUT OF THE RESULTS OF, OR USE OF, THE NASA SOFTWARE AND/OR TECHNICAL DATA.

- B. THE UNITED STATES GOVERNMENT DISCLAIMS ALL WARRANTIES AND LIABILITIES REGARDING THIRD PARTY COMPUTER SOFTWARE, DATA, OR DOCUMENTATION, IF PRESENT IN THE NASA SOFTWARE AND/OR TECHNICAL DATA, AND DISTRIBUTES IT “AS IS.”

VIII. **WAIVER AND INDEMNIFICATION.**

- A. RECIPIENT AGREES TO WAIVE ANY AND ALL CLAIMS AGAINST THE U.S. GOVERNMENT AND ITS CONTRACTORS AND SUBCONTRACTORS, AND SHALL INDEMNIFY AND HOLD HARMLESS THE UNITED STATES GOVERNMENT AND ITS CONTRACTORS AND SUBCONTRACTORS FOR ANY LIABILITIES, DEMANDS, DAMAGES, EXPENSES, OR LOSSES THAT MAY ARISE FROM RECIPIENT’S USE OF THE NASA SOFTWARE AND/OR TECHNICAL DATA, INCLUDING ANY DAMAGES FROM PRODUCTS BASED ON, OR RESULTING FROM, THE USE THEREOF.
- B. IF RECIPIENT FURTHER RELEASES OR DISTRIBUTES THE NASA SOFTWARE AND/OR TECHNICAL DATA, RECIPIENT AGREES TO OBTAIN THIS IDENTICAL WAIVER OF CLAIMS, INDEMNIFICATION, AND HOLD HARMLESS AGREEMENT WITH ANY ENTITIES THAT ARE PROVIDED WITH THE NASA SOFTWARE AND/OR TECHNICAL DATA.
- C. NOTWITHSTANDING THE ABOVE, WHEN RECIPIENT IS PROHIBITED BY LAW FROM PROVIDING INDEMNIFICATION, THE INDEMNIFICATION REQUIREMENTS SPECIFIED ABOVE SHALL NOT APPLY TO RECIPIENT.

- IX. **NON-ENDORSEMENT.** This Agreement does not, in any manner, constitute an endorsement by NASA of any test results, resulting designs, hardware, or other matters resulting from use of the NASA SOFTWARE or TECHNICAL DATA.

- X. **NON-EXCLUSIVITY.** This Agreement is not exclusive; accordingly, NASA may enter into similar agreements for the same or similar purpose, and for the same or similar NASA SOFTWARE or TECHNICAL DATA, with other private or public entities.

- XI. **INDEPENDENT RELATIONSHIP.** This Agreement is not intended to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business organization, or agency agreement of any kind, and the rights and obligations of the PARTIES shall be only those expressly set forth herein.

- XII. **CHOICE OF LAW.** U.S. Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of the Agreement, the meaning of its provisions, and the rights, obligations and remedies of the PARTIES hereto.

XIII. **MODIFICATIONS AND ASSIGNMENT.**

- A. This Agreement constitutes the entire understanding and agreement between the PARTIES relating to release of the NASA SOFTWARE or TECHNICAL DATA, and may not be superseded, modified, or amended except by further written agreement duly executed by the PARTIES.
- B. RECIPIENT shall not assign or otherwise transfer this Agreement, or any interest arising under it, without NASA's prior written consent.

XIV. **TERMINATION.**

- A. This Agreement shall end upon the completion of the CONTRACT/GRANT/AGREEMENT, unless terminated earlier.
- B. Either NASA or RECIPIENT may terminate this Agreement at any time, by giving the other written notice thirty (30) days before the desired date of termination.
- C. Should NASA determine that RECIPIENT or its AUTHORIZED USERS have breached a covenant contained in this Agreement, or failed to meet the requirements of this Agreement, NASA may terminate this Agreement immediately by written notice.
- D. Upon termination of this Agreement, RECIPIENT and AUTHORIZED USERS shall certify that all copies of the NASA SOFTWARE and/or TECHNICAL DATA within their possession, custody, or control have been destroyed.

XV. **EFFECTIVE DATE.** The effective date of this Agreement shall be the date RECIPIENT executes this Agreement as set forth below.

XVI. **SIGNATORY AUTHORITY.**

- A. RECIPIENT agrees that a facsimile signature shall be valid and have full force and the same effect upon RECIPIENT as original signatures.
- B. The undersigned represents that he or she is a United States citizen, or a U.S. person (as defined by 22 CFR §120.15), and has the authority to sign this Agreement on behalf of RECIPIENT.
- C. By signing below, the undersigned agrees to the above terms and conditions on behalf of RECIPIENT.

Executed on Behalf of RECIPIENT by:

Signature: _____
Name (printed or typed): _____
Title: _____
Date: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
E-mail: _____

**AFTER EXECUTING THIS AGREEMENT, PLEASE RETURN IT
TO THE NASA SOFTWARE RELEASE AUTHORITY IDENTIFIED ABOVE.**